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09/801,166	03/07/2001	Siegfried Schmidt	Bromhead 28	4314

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EXAMINER

CRAWFORD, GENE O

ART UNIT

PAPER NUMBER

3651

DATE MAILED: 04/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/801,166

Applicant(s)

SCHMIDT ET AL.

Examiner

Gene O. Crawford

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 11, 15 and 17-23 is/are rejected.
- 7) ☒ Claim(s) 9, 12-14 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9 and 11-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 9, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 11 contains several limitations that lack antecedent basis in the claim, these limitations include: "the intervening space" and "the central plate of the conveyor". Also claim 15 recites "the abutment joints", however there is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 2, 6-8, 10, 15 and 17-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Klimeck et al.

The toggle bar link assembly disclosed by Klimeck et al. includes all the claimed features and in particular includes: toggle bar sockets 13 arranged at the sides of the

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pans 2, 3, open to the side, a toggle bar 4 having a shaft and two heads 14 joined in one piece the shaft being smaller in cross section each head 12 having a locking lug 14 to secure the toggle bar 4 in the sockets via a detachable securing element 17, **(claim 1, 20)** the toggle bar having a first plane of symmetry Z and second plane of symmetry and the toggle bar sockets having a first in which they are formed mirror symmetrically and second plane of symmetry in which the pans 2, 3 are jointed (figure 3); **(claims 17-19, 21, 22)** in which the toggle bar 4 and the securing elements 16,17 each have a first and second plane of symmetry in which they are symmetrically formed (figure 3); **(claim 2)** the first toggle bar plane of symmetry Z runs through the center of the shaft between the toggle bar heads and the second plane of symmetry runs along the shaft and centrally through the toggle bar heads and the locking lugs (figure 3); **(claim 6)** the locking lugs 14 and toggle bar heads 12 on both shaft ends are formed identical to each other (figure 3); **(claim 7)** the socket cut-out 13 having a channel section open to the front and extending for the acceptance of the shaft (figure 3), a head cut-out 18, and at the ends an open locking section restricted by wall projections that accommodate securing elements 16, 17; **(claim 8)** the toggle bar socket 13 having side parts provided with notches for acceptance of securing elements 16 as broadly claimed; **(claim 10)** the toggle bar sockets including cast parts 2A, 3A; and **(claim 15)** the toggle bar sockets being identical to one another in all the abutment joints of the pans (figure 1).

5. Claims 5 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Merten et al.

The toggle bar link assembly disclosed by Klimeck et al. includes all the claimed features and in particular includes: (claim 18) toggle bar sockets 29 arranged at the sides of the pans 7,8, open to the side, a toggle bar 26 having a shaft and two heads 27 joined in one piece the shaft being smaller in cross section each head 27 having a locking lug 28 to secure the toggle bar 26 in the sockets 29 via a detachable securing element 30, the toggle bar having a first plane of symmetry Z and second plane of symmetry and the toggle bar sockets having a first in which they are formed mirror symmetrically and second plane of symmetry in which the pans 7,8 are jointed (figure 2), in which the toggle bar 26 and the securing elements 30 each have a first and second plane of symmetry in which they are symmetrically formed (figure 2); and (claim 5) the toggle bar heads 27 tapering conically to the shaft by means of inclined shoulder surfaces (figure 3).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klimeck et al. in view Steinkuhl et al.

The toggle bar link assembly disclosed by Klimeck et al. includes all the claimed features but does not disclose the shaft of the toggle has a waist. However, this

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appears to be an obvious design choice and expedient in view of Steinkuhl et al.

Steinkuhl et al. disclose the broad teaching of providing a toggle bar for a conveyor pans with a shaft 21 that has a waist (figure 4). It would have been obvious to one of ordinary skill in the art to provide the toggle bar of Klimeck et al. include a waist such requiring the mere choice of an art recognized design for a toggle bar for connecting pans of a mining machine as taught by Steinkuhl et al.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klimeck et al. in view of Hauschopp et al.

With regard to claim 4, the toggle bar link assembly disclosed by Klimeck et al. includes all the claimed features but does not disclose the toggle bar tapers outwards and downwards from the plane of symmetry or the toggle bar head. However, this appears to be an obvious design choice and expedient in view of Hauschopp et al. Hauschopp et al. disclose the broad teaching of providing a toggle bar 46 wherein the toggle bar tapers outwards and downwards from the plane of symmetry or the toggle bar head (figure 3). It would have been obvious to one of ordinary skill in the art to provide the toggle bar of Klimeck et al. taper outwards and downwards from the plane of symmetry or the toggle bar head such requiring the mere choice of an art recognized design for a toggle bar for connecting pans of a mining machine as taught by Hauschopp et al.

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klimeck et al. in view of Hahn et al.

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With regard to claim 11, the toggle bar link assembly disclosed by Klimeck et al. includes all the claimed features but does not disclose a fastening rib of the rear side of the toggle bar socket. Hahn et al. disclose the broad teaching of providing a toggle bar link assembly (figure 3) wherein the toggle bar socket 18 has on its rear side a fastening rib 13 for positive engagement of the channel section 9. It would have been obvious to one of ordinary skill in the art to provide the toggle bar socket of Klimeck et al. include on its rear side a fastening rib to facilitate a secure engagement of the toggle bar link assembly to the conveyor channel section as taught by Hahn et al.

***Allowable Subject Matter***

10. Claim 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claims 9 and 12-14 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter: a toggle bar link assembly including the unique features of (a) 'a toggle bar socket having wall sections having open cut-outs semi-circular in cross section'; and (b) 'an assembly tool including a handle and tool plate having indexing noses on the side of the tool plate away from the handle' in combination with the rest of the claimed language are not taught or fairly suggested by the prior art.

***Response to Arguments***

13. Applicant's arguments with respect to claims 1-23 have been fully considered but are deemed unpersuasive. Applicant argues Klimeck requires a multiplicity of different variously constructed components that are required for the production of the toggle links and that applicant's claimed device only requires three parts in its manufacture.

However, applicant's claims are not drawn to a method of manufacture but to a toggle bar link assembly and Klimeck et al. discloses the three parts (i.e. a cross bar shape 4, a toggle bar socket 13, and a securing element 17) claimed by applicant in their toggle bar link assembly. For the foregoing reasons the claims stand rejected.

***Conclusion***

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

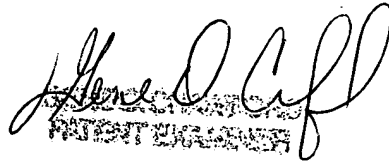


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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gene O. Crawford whose telephone number is 703/305-9733. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on 703/308-1113. The fax phone numbers for the organization where this application or proceeding is assigned are 703/305-3597 for regular communications and 703/305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/308-1113.



Gene O. Crawford  
PATENT EXAMINER

gc  
April 28, 2003